



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,584	12/12/2003	Erich J. Schlosser	WEB-954-US	1733
61215	7590	05/07/2007	EXAMINER	
DAVID I. ROCHE			COCKS, JOSIAH C	
BAKER & MCKENZIE LLP				
130 EAST RANDOLPH DRIVE			ART UNIT	
CHICAGO, IL 60601			PAPER NUMBER	
			3749	
			MAIL DATE	
			DELIVERY MODE	
			05/07/2007	
			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/735,584

Applicant(s)

SCHLOSSER ET AL.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/2/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 20, 2007 has been entered.

#### ***Drawings***

2. The drawings filed December 12, 2003 were previously indicated as accepted by the examiner. However, upon further review, the examiner notes that the drawings include handwritten reference characters that are difficult to read and would not be adequately reproducible in any patent that issues from this application. Accordingly, new drawings are required that provide clear reference characters.

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended

Art Unit: 3749

drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3749

Claim 11 recites the limitation "the gas burner portions" in line 11. There is insufficient antecedent basis for this limitation in the claim. Specific gas burner "portions" have not been identified, however, the claim has previously introduced burner "sections." While it is not clear if the recited "portions" corresponds to the previously introduced "sections" the claim has been regarded as such for the purpose of an examination on the merits.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3749

7. **Claims 1-10 and 27-31** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. **6,158,330 to Andress** ("Andress") in view of U.S. Patent No. **2,253,834 to Volks** ("Volks").

Andress discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1-10 and 27-31

In particular, in regard to at least claims 1 and 27, Andress shows a removable cooking grid/grate for a barbecue grill that includes a cooking surface made of upper surface (12) of a plurality of cooking members (17) and a lower surface (14) that includes a solid energy receptor portion (see troughs 13 positioned on the lower surface 14, Fig. 3). The cooking members (17) of the upper surface are considered to be depending from the solid energy receptor portion (see Fig. 2B). Pluralities of openings (16) are arranged between the cooking members and no openings extend through the solid energy receptor portion (note at least Fig. 3 showing no openings in portions 13).

In further regard to the recitation that no openings extend through the solid energy receptor portion, as shown in Fig. 3, the grate is an inverted position where the lower surface of troughs (13) is shown as the top surface. As noted above, the troughs (13) have no openings extending therethrough. The examiner does note that Andress provides that cutouts (15) may also be provided in the bottom layer (14) adjacent the troughs (13) (see col. 2, lines 31-34).

While the examiner considers that the troughs (13 and/or 18) taken alone constitute the solid energy receptor portions, even if the energy receptor portion (troughs 13) were regarded to also include the portions that include cutouts (15) it has been held that the omission of an element is



Art Unit: 3749

obvious if the function of the element is not desired. See MPEP 2144.04(II)(A). In this case if the function of the cutouts (15) in providing a passage to permit convection of heated air is not desired, a person of ordinary skill in the art would readily omit the cutouts resulting in solid areas between the troughs (13 and/or 18) as well.

In regard to at least claims 2 and 9, the cooking grate of Andress clearly has a mass and “a substantial portion” of the mass is considered to reside in the solid energy reception portions (at least troughs 13 and/or 18) of the cooking grate (see at least Fig. 2A and 3).

In regard to at least claim 10, Andress clearly notes that the type of material employed or amount of material has an effect on the weight/mass of the grate (see col. 2, lines 35-39). Further, Andress suggests that the size and shape of the openings are variable (see col. 1, lines 39-41 and col. 2, lines 30-32). To have adjusted the mass distribution of the grate or the size of the openings to appear as recited in applicant’s claims would be simply a matter of optimizing the variable mass of the grate and variable slot sizes of Andress as desired through routine experimentation. Such optimization through routine experimentation does not serve to patentably distinguish applicant’s invention. See MPEP 2144.05(II)(A).

In regard to at least claim 3, the solid energy receptor portion (troughs 13, Fig. 3) has a thickness extending from the lower surface to a distance below the cooking surface as recited.

In regard to at least claims 4 and 27, note the curved or sloped portions of troughs/energy receptor portions/troughs (13), which are considered to be on the supper surface of the energy receptor/troughs (13).

In regard to at least claims 5 and 28, the troughs (13) include an apex located below the cooking surface (see apexes formed *between* troughs 18 an/or 13, Fig. 2a).

Art Unit: 3749

In regard to at least claims 6, 29, 30, and 31, at least the downward sloped portions of grid/mound portions (17) are considered to be the recited upper grease control structure having a plurality of ribs as recited. Further, the trough portions (13 and/or 18) that form the energy receptor portion function to channel grease drippings to the grease box (20) and are considered the lower grease control structure comprising a ridge as recited.

In regard to at least claim 8, the cooking grate (at least 12) of Andress is considered to comprise an intermediate plane defined by a surface intermediate the cooking surface and the lower surface in the same manner claimed and disclosed (see at last Figs. 2A and 2B).

In regard to at least claim 9, a substantial portion of the mass of the cooking grate is considered to be located between the intermediate plane and the lower surface as recited.

Andress clearly teaches that the cooking grate is included in a barbecue grill assembly that has a cooking chamber and a heating source underneath the grate (see col. 1, lines 12-15). Further, Andress provides that the cooking grate "may be used with.... gas-burning horizontal or vertical barbecue grills" (see col. 1, lines 61-63). However, Andress does not expressly provide that the heating source is a gas burner in a lower portion of the cooking chamber and that the cooking grate is adjacent the gas burner such that no structure is located between the gas burner and the solid energy receptor portion of the cooking grate.

Volks teaches a barbecue grill assembly with a cooking grate in the same field of endeavor as both applicant's invention and Andress. In Volks, the barbecue grill expressly includes a gas burner (any or all of 10) within a cooking chamber. The cooking grate (31) of Volks is of similar construction and arrangement to that of Andress and is shown provided



Art Unit: 3749

adjacent the gas burners such that no structure is between the cooking grate and gas burners (see Fig. 4).

In regard to at least claim 7, when Andress is modified to incorporate a gas burner as taught in Volks, the examiner considers that the gas burner would be positioned below the cooking grate in the manner recited.

Therefore, in regard to claims 1-10 and 27-31, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the heat source provided underneath the cooking grate of Andress would be a gas burner arranged adjacent the cooking grate as taught in Volks in order to enable flames from the gas burner to impinge on the cooking grid in order to provide heat to the food cooked thereon while also providing that any grease dripping from the grid is directed to an appropriate area without dropping on the burner to thereby minimize smoking and unpleasant smells (see Volks, page 2, col. 1, lines 1-19 and col. 1, line 72 through col. 2, line 4).

8. **Claims 11-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. **6,158,330 to Andress** ("Andress") in view of U.S. Patent No. **5,755,154 to Schroeter et al.** ("Schroeter").

Andress discloses in the specification and Figs. 1-3 an invention in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 11-26.

In particular, in regard to at least claim 11, Andress shows a removable cooking grid/grate for a barbecue grill that includes a cooking surface made of upper surface (12) of a plurality of grid like cooking members (17) and a lower surface (14) that includes a solid energy

Art Unit: 3749

receptor portion (see troughs 13 positioned on the lower surface 14, Fig. 3). The cooking members (17) of the upper surface are considered to be depending from the solid energy receptor portion (see Fig. 2B). Pluralities of openings (16) are arranged between the cooking members and no openings extend through the solid energy receptor portion (note at least Fig. 3 showing no openings in portions 13).

In regard to at least claim 14, as shown in Fig. 3, the grate is an inverted position where the lower surface of troughs (13) is shown as the top surface. As noted above, the troughs (13) have no openings extending therethrough. The examiner does note that Andress provides that cutouts (15) may also be provided in the bottom layer (14) adjacent the troughs (13) (see col. 2, lines 31-34). While the examiner considers that the troughs (13 and/or 18) taken alone constitute the solid energy receptor portions, even if the energy receptor portion (troughs 13) were regarded to also include the portions that include cutouts (15) it has been held that the omission of an element is obvious if the function of the element is not desired. See MPEP 2144.04(II)(A). In this case if the function of the cutouts (15) in providing a passage to permit convection of heated air is not desired, a person of ordinary skill in the art would readily omit the cutouts resulting in solid areas between the troughs (13 and/or 18) as well.

In regard to at least claim 16, the cooking grate of Andress clearly has a mass and “a substantial portion” of the mass is considered to reside in the solid energy reception portions (at least troughs 13 and/or 18) of the cooking grate (see at least Fig. 2A and 3).

In regard to at least claims 17-20, Andress clearly notes that the type of material employed or amount of material has an effect on the weight/mass of the grate (see col. 2, lines 35-39). Further, Andress suggests that the size and shape of the openings are variable (see col. 1,

Art Unit: 3749

lines 39-41 and col. 2, lines 30-32). To have adjusted the mass distribution of the grate or the size of the openings to appear as recited in applicant's claims would be simply a matter of optimizing the variable mass of the grate and variable slot sizes of Andress as desired through routine experimentation. Such optimization through routine experimentation does not serve to patentably distinguish applicant's invention. See MPEP 2144.05(II)(A).

In regard to at least claim 21, the solid energy receptor portion (troughs 13, Fig. 3) receives heat in the manner recited by applicant.

In regard to at least claim 22, note the curved or sloped portions of troughs/energy receptor portions/troughs (13), which are considered to be on the upper surface of the energy receptor/troughs (13).

In regard to at least claim 23, the troughs (13) include an apex located below the cooking surface (see apexes formed *between* troughs 18 and/or 13, Fig. 2a).

In regard to at least claims 24 and 25, at least the downward sloped portions of grid/mound portions (17) are considered to be the recited upper grease control structure having a plurality of ribs as recited. Further, the trough portions (13 and/or 18) that form the energy receptor portion function to channel grease drippings to the grease box (20) and are considered the lower grease control structure comprising a rib as recited.

In regard to at least claims 26, the openings (15) allow a portion of the convective energy created by the heat source to pass through the cooking grate into an upper portion of the cooking chamber (see col. 2, lines 31-34).

Andress clearly teaches that the cooking grate is included in a barbecue grill assembly that has a cooking chamber and a heating source underneath the grate (see col. 1, lines 12-15).

Art Unit: 3749

Further, Andress provides that the cooking grate “may be used with.... gas-burning horizontal or vertical barbecue grills” (see col. 1, lines 61-63). However, Andress does not expressly provide that a heating source is provided in the form of a gas burner that includes first and second sections arranged transverse to one another or that the cooking grate is adjacent the gas burner such that no structure is located between the gas burner and the solid energy receptor portion of the cooking grate.

Schroeter teaches a barbecue grill in the same field of endeavor as applicant’s invention and Andress. In Schroeter, a gas burner (17) is provided that is located directly underneath a grease collecting assembly/sear plate (41) and cooking grid assembly (35). The gas burner (17) is expressly arranged to have a first section (28) and a second section (25) that is generally transverse to the first section (see at least Fig. 12).

In regard to the recitation that the energy receptor surface has direct exposure to a plurality of flames extending from the burner sections, the examiner notes that Schroeter provides that flames from the burner sections directly impinge upon the lower surfaces of the grease collecting assembly/sear plate (41). Though Schroeter discloses that the cooking grid (35) and sear plate (41) are two separate structures, as noted above, Andress clearly provides that the grease collecting structures and cooking surface are combined into a single unit. When Andress is modified to incorporate a gas burner such as that of Schroeter a person of ordinary skill in the art would reasonably consider that the gas burner would be located underneath the cooking grate of Andress to receive flames from the burners. Again the examiner notes that Andress does provide recognize that gas grills include a heating source underneath a cooking grid (see

Art Unit: 3749

Andress, col. 1, line 14) and that such a heat source may be in “gas-burning horizontal or vertical barbecue grills” (see Andress, col. 1, lines 63-64).

In regard to the limitation that the low energy receptor plate includes sections parallel to the first and second gas burner sections, as the troughs (13) in Andress clearly form a plane, when the gas burner is placed beneath this plane, a person of ordinary skill in the art would reasonably understand this plane to have sections that are parallel to each of the first and second burner sections.

In regard to at least claim 12, it has been held that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” See MPEP 2144.05(II)(A) (citing *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)). In this case, a person of ordinary skill in the art would reasonably place the gas burner taught in Schroeter less than 3 inches below the cooking grid of Andress through routine experimentation.

In regard to at least claims 13 and 15, once the gas burner is placed beneath the cooking grate of Andress, no structure would be located between the grate and the burner sections.

Therefore, in regard to claims 11-26, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cooking assembly of Andress to incorporate the gas burner as taught in Schroeter for the desirable purpose of providing a burner to enable cooking of food products placed on the cooking grate in a manner that provides for vaporization of grease that is received within the grease collecting portions of the cooking grate to enhance the flavor of food cooked on the grate (see Schroeter, col. 2, lines 1-37). Further, the

Art Unit: 3749

examiner again notes that Andress suggests that the placement of such a gas burner would be desirable (see Andress, col. 1, lines 14 and lines 63-64).

### *Response to Arguments*

9. Applicant's arguments filed February 20, 2007 have been fully considered but they are not persuasive.

Applicant again argues that the prior art does not suggest placing a heating source directly beneath the cooking grate of Andress. Applicant further contends that Andress only suggest that his cooking grate would be used with a vertical type barbecue grill as shown for instance in U.S. Patent No. 6,182,560 and would not be directly underneath the cooking grate. The examiner respectfully disagrees.

In response, the examiner notes applicant's assertion directly conflicts with the plain and unambiguous disclosure of Andress that the cooking grid is for use in a barbecue grill having a "heating source underneath...said cooking grid" (see Andress, col. 1, lines 14) and that the cooking grate may be used in "gas burning *horizontal* or vertical barbecue grills." (Andress, col. 1, lines 63-64) (*emphasis added*).

Further, the examiner notes that it has been held that under 35 U.S.C. § 103, a reference must be considered not only for what it expressly teaches, but also for what it fairly suggests (*In re Burckel*, 592 F.2d 1175, 1179, 201 USPQ 67, 70 (CCPA 1979); *In re Lamberti*, 545 F.2d 745, 750, 192 USPQ 278, 280 (CCPA 1976)), as well as the reasonable inferences which the artisan would logically drawn from the reference. See *In re Shepard*, 319 F.2d 194, 197, 138 USPQ 148, 150 (CCPA 1963).



Art Unit: 3749

In this present application, the prior art, such as that of Volks and Schroeter, clearly teach that in horizontal gas burning grills, the gas burner is arranged directly beneath the cooking grate in the same manner as applicant's invention. Accordingly, the prior art reasonably and fairly suggests that the gas burners of Volks and Schroeter would be placed directly beneath the cooking grate of Andress.

Applicant also asserts that the troughs (13) of Andress cannot be construed to be the energy receptor portions of applicant's claims. The examiner respectfully disagrees.

In response, the examiner notes that in making this assertion applicant again contends that Andress only contemplates use with a vertical heat source. For the reasons noted above, this assertion clearly conflicts with the plain unambiguous teachings of both Andress and the secondary references of Schroeter and Volks. Further, the examiner notes that the troughs (13) are arranged at the lower surface of the cooking grate in the same manner as applicant's energy receptor portion and are illustrated and described as having no openings (see at least Fig. 3). The prior art suggests that a gas burner arranged beneath the grate of Andress would impinge flames upon these solid lower trough portions in order to vaporize of grease that is received within the grease collecting portions of the cooking grate to enhance the flavor of food cooked on the grate (see Schroeter, col. 2, lines 1-37). Accordingly, applicant's argument has been carefully considered but is not persuasive.

Applicant also argues that the examiner uses "double inclusion" to reject claims 1, 14, and 27. To this end, applicant argues that the examiner has relied upon the grid member (31) of Volks to include both cooking members and a solid energy receptor portion. The examiner respectfully disagrees.

Art Unit: 3749

In response, the examiner notes that it has been held that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the examiner has relied upon the combined teachings of Andress in view of either Volks or Schroeter. As noted above, Andress clearly shows each of cooking grid members (17) **and** a solid energy receptor portion (outer surfaces of troughs 13). The reference to Volks (and Schroeter) is relied upon to show the use of a gas burner in a grill unit that is arranged beneath an overlying cooking and/or grease collecting device as recited in applicant's claims.

Applicant also argues that the rejections applied by the examiner on the basis of optimizing the mass and size of the openings is in error. The examiner respectfully disagrees.

In response, the examiner notes that the prior Office action inadvertently referred to MPEP 2144.04(II)(A), however the prior authority for the assertion of optimization through routine experimentation appears in MPEP 2144.05(II)(A). The examiner regrets the typographical error, however, the examiner's rationale for such optimization is still regarded as proper. In particular, the examiner notes that the weight/mass and the opening sizes are suggested by Andress to be variable (see col. 1, lines 39-41 and col. 2, lines 30-32) and are thus properly regarded as result effective variables that would be reasonably optimized by a person of ordinary skill in the art.

Applicant further argues that neither Andress nor Volks disclose a lower grease control structure. The examiner respectfully disagrees.

Art Unit: 3749

In response, the examiner notes that as shown at least in Figs. 1 and 2A of Andress, the lower section of the cooking grate includes channels that lie within the troughs (either 13 or 18) that function to direct grease to a grease box (20). As noted above, this lower section of Andress is considered the recited lower grease control structure recited in applicants' claims. Further, the examiner notes that the very purpose of the channels of Andress are to direct to a grease collection box (20) and thus away from any heat source arranged beneath the grate. Accordingly, the channels are clearly and unambiguously positioned past an extent of a gas burner arranged beneath the cooking grate, contrary to applicant's assertion.

Applicant's arguments as to amended claim 11 have been considered but are moot in view of the reliance upon newly cited reference to Schroeter which discloses a gas burner having sections as described.

Accordingly, applicant's claims are not considered to patentably distinguish applicant's invention over the prior art of record.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 3749


will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Rinehart, can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc  
May 3, 2007

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749